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IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. 664

STEPHEN LILLO AND PATERSON BLOOD BANK INC.,

Petitioners,

vs.

UNITED STATES OF AMERICA

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

FREDERIC C. RITGER, JR.,
VAN RIPER & BELMONT,
744 Broad Street,
Newark, New Jersey.

Counsel for Petitioners

Adams Press Corp., 11 Commerce Street, Newark, N. J.—Market 3-8611-12

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No.

STEPHEN LILLO and PATERSON BLOOD BANK, INC.,

Petitioners,

vs.

UNITED STATES OF AMERICA

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

Stephen Lillo and Paterson Blood Bank, Inc., your petitioners, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Third Circuit, entered in the above entitled case on September 13, 1965.

Opinion Below

There was no written opinion by the Court below.

Jurisdiction

The judgment of the Court of Appeals was entered on September 13, 1965. The jurisdiction of this Court is invoked under 28 U. S. C. §1254 (1).

Question Presented

Where criminal appeal was dismissed for lack of prosecution, through no fault of the petitioners and without their knowledge were petitioners deprived of a fundamental right without due process of law?

Constitutional Provision Involved

The Fifth Amendment of the United States Constitution:

> "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

Statement

The petitioner, Stephen Lillo, together with the corporate petitioner, was prosecuted in the United States District Court for the District of New Jersey on a 36-count indictment, charging violations of Title 42, United States Code, Section 262 (a) and (b) and Title 21, United States Code, Section 331. The petitioner, Stephen Lillo, was found guilty by a jury on 11 counts, while the corporation was convicted on 20 counts.

Sentence was imposed on June 12, 1964 and the petitioner, Stephen Lillo, was sentenced to nine months imprisonment on each count, the sentences to be served concurrently.

The corporation was sentenced to pay a fine of $10,000 in the aggregate.

A timely notice of appeal was filed and the individual petitioner was continued on bail, pending the outcome of his appeal.

In September of 1965, a stipulation was entered into between former counsel for petitioners and the United States Attorney, and approved by the Court of Appeals, extending to October 15, 1964 the time in which petitioners could file their appendix and brief. Later, on January 29, 1965, the said attorney for petitioners served a notice of motion upon the United States Attorney, moving for an order to permit the appellants to file their brief out of time. The moving papers were accompanied by an affidavit of the attorney and one of the individual petitioner, Stephen Lillo.

On February 9, 1965, the Circuit Court of Appeals entered an order providing that the petitioners were granted until February 15, 1965, to file a consolidated typewritten brief out of time. There was a further provision that on or before February 26, 1965, the petitioners should file with the Clerk of the Court of Appeals four typed copies of a summary of the testimony to serve in lieu of a printed appendix. On February 25, 1965, former counsel for the petitioners moved for an order modifying the order of the Circuit Court of Appeals dated February 9, 1965, to provide that the summaries as called for in that order should be served or filed before March 12, 1965. Such moving papers were accompanied by an affidavit of the attorney. On March 9, 1965, the Court granted the aforesaid application.

On July 19, 1965, the said attorney for the petitioners again moved for an extension of the time in which the petitioners could file the typewritten summary of the testimony.

An affidavit by the attorney recited that as counsel for appellants, it was his personal responsibility to see to it that the summary was filed, that the petitioners themselves were not at fault, and full responsibility for failure to complete the task was accepted by counsel.

On July 21, 1965, the Circuit Court of Appeals entered the following order, dismissing the appeals for want of timely prosecution and denying the application for extension of time in which to file the typewritten summary:

> "It appearing that the appeals in the above-entitled cases were docketed and the record filed July 24, 1964, that the brief and appendix were due thirty days there-after, that after successive extensions the appellants filed their consolidated brief on February 10, 1965, that by order of February 9, 1965 this Court granted appellants leave to dispense with appendices provided, however, that they file a summary of testimony by February 26, 1965, that the time for filing the summary of testimony was extended to March 12, 1965, that although the appellants were advised by the clerk of this Court of their failure to comply with the Court's order they made no response to the several letters, that on July 19, 1965, when the case was called for dismissal for want of timely prosecution the appellants filed a motion for leave to file the summary of testimony out of time on July 31, 1965, that counsel for appellants did not appear in person on July 19, 1965 to show cause why the appeals should not be dismissed.
>
> "It is ORDERED that the motion to file the summary of testimony out of time be and it hereby is denied;
>
> "It is further ORDERED that the appeals in the above-entitled cases be and they hereby are dismissed for want of timely prosecution."

On August 7, 1965, the petitioners, having retained new counsel, filed a motion with the Court of Appeals asking that the appeals be reinstated and that the cases be restored to the list of pending appeals on the grounds that the appeals were dismissed for want of timely prosecution on the part of counsel and through no fault of the petitioners.

On September 13, 1965, the Court of Appeals denied the application by petititioners in the following order:

> "Upon consideration of the motion by appellants that the above entitled cases be reinstated and restored to the list of pending appeals, and of the affidavit attached to the motion, and of the affidavit filed by Daniel H. Greenberg, Esquire, counsel for appellants prior to the dismissal of the appeals,
>
> "It is ORDERED that the motion be and it hereby is denied."

All notices by the Court of Appeals were directed to the counsel for the petitioners and the petitioners received no notice of the impending dismissal of their Appeal. The first notice that the petitioners had was by letter from their attorney subsequent to the entry of the Order of July 21, 1965 which dismissed the Appeal for want of timely prosecution. The petitioners, immediately upon ascertaining the facts, retained new counsel and sought to have the Appeal restored to the list so that it might be heard on its merits in due course.

The Court of Appeals refused to open the matter, basing their determination not upon the merits of the Appeal but upon failure of original counsel to proceed with proper dispatch.

Reasons for Granting the Writ

The question presented by this case represents such a departure from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision. In essence it involves the standards of fairness acknowledged as the responsibility of all parties to a federal criminal proceeding.

The dismissal of an appeal in a criminal cause for want of timely prosecution is fundamentally unfair to the defendant where failure to proceed was solely the fault of his attorney.

The Order of Dismissal and the Order denying to the petitioners a restoration of their Appeals having inflicted upon petitioners serious injury without any finding that they were guilty of any procedural wrongdoing other than perhaps by implication in their selection of counsel. The Circuit Court of Appeals in order to punish a lawyer has deprived one petitioner of liberty and the other of property without process of law. It is submitted that this procedure clearly offends the basic principles of our Constitution. To paraphrase the statement as quoted in the dissenting opinion in *Link* v. *Wabash R. Co.*, 370 U. S. 626, 637 (1962), the Circuit Court of Appeals does not lack disciplinary authority over an attorney and there is no justification, moral or legal, for its punishment of an innocent defendant for the personal conduct of his counsel. The sins of the lawyer are not visited upon the client.

As petitoner reads the Orders of the Court of Appeals dismissing the Appeals and denying their restoration, the Court did not consider the Appeals on the merits although the Brief of Appellants was filed with the Court on or about February 10, 1965. The Court of Appeals based its action solely upon the failure to proceed in proper manner and

with required promptness. On numerous occasions the Courts in various jurisdictions have held that clients are bound by their counsels' inaction. However, in those cases there has been present a strong inference of conscious acquiesence on the part of the client. For example, in the Third Circuit Court of Appeals, *U. S.* v. *Sorrentino,* 175 F. 2d 721 (3rd Cir., 1949), it was held that a criminal defendant could not later object to action taken by his attorney in his presence where said defendant made no suggestion that he was not competently represented by said attorney during the course of the trial.

In the case of *U. S.* v. *Richmond,* 295 F. 2d 83 (2nd Cir., 1961), the Court dealt in the same manner with a question of strategy and trial tactics and held that where an inference of conscious acquiesence appeared the defendant would be bound by his attorneys actions.

To hold that an attorney by his delay or inaction can forfeit his client's right to an Appeal from a criminal judgment on the merits and in effect "waive" his client in to the penitentiary is offensive in any legal sense. There can be no argument that where a defendant unequivocally and consciously waives a specific right that such waiver operates to bar his attempt to assert the right at a later time, but it does not follow that a fundamental right of a client can be waived, without his knowledge and without any evidence of acquiescence whatsoever, by his attorney. In the case before the Court, there is no evidence in the record that the petitioners in any way were responsible for or had knowledge of the delay, by counsel, which was incurring the displeasure of the Court of Appeals. As soon as petitioners became aware of the situation which existed, they took steps to correct it.

A restoration of the Appeal for a hearing on its merits would not adversely affect any party to the action. It is

the avowed interest of the United States of America that no person be deprived of liberty or property without due process. It is to the interest of our society that no man be committed to a penitentiary until he has been given a full hearing according to law and upon the merits.

CONCLUSION

The petitioners have been deprived of liberty and property without due process by virtue of the dismissal of their appeal in the Court of Appeals, where the reason for such dismissal was solely the delinquency of the attorney. To say that the sins or faults of a lawyer must always be visited upon his client is to ignore the practicalities and realities of the lawyer-client relationship. It cannot be said that there was a duty upon the petitioners to supervise the daily activities of their former counsel. In the absence of specific and direct notice to the petitioners that their case was in danger of dismissal, the interest of justice dictates that the appeal should not have been dismissed, and the petitioners therefore pray that a Writ of Certiorari be granted.

Respectfully submitted,

VAN RIPER & BELMONT,
By FREDERIC C. RITGER, JR.,
744 Broad Street,
Newark, New Jersey,
Counsel for Petitioners.

APPENDIX A

PETINENT PARTS OF THE RECORD IN THE COURT BELOW

UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

UNITED STATES OF AMERICA,

Appellee,

v.

PATERSON BLOOD BANK, INC., and STEPHEN LILLO,

Appellants.

STIPULATION

IT IS HEREBY STIPULATED AND AGREED by and between the attorneys for the respective parties hereto that the time for appellants to serve and file their appendix and brief, be and the same hereby is extended to and including October 15, 1964, and an order to this effect may be entered without further notice. The reason for the aforesaid extension of time is the fact that the transcript of the trial was not completed until on or about August 17, 1964, and was not filed as a supplemental record on appeal in this Court until on or about the same date; that the said record on appeal consists of the transcript of appellants' pretrial motion to suppress evidence consisting of 253 pages and

the transcript of the trial consisting of 1169 pages, and appellants require this period of time within which to complete the preparation of their appendix and brief.

Dated: Newark, New Jersey
August 31, 1964.

DAVID M. SATZ, JR., Esq.
United States Attorney for the
District of New Jersey
By: JEROME D. SCHWITZER
Assistant U. S. Attorney

Daniel H. Greenberg
DANIEL H. GREENBERG
Attorney for Appellants

APPROVED: KALODNER, J.
Received and Filed: September 2, 1964.
IDA O. CRESKOFF, Clerk.

Appendix A

UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

UNITED STATES OF AMERICA,

v.

PATERSON BLOOD BANK, INC., a corporation and STEPHEN LILLO,

Appellants.

NOTICE OF MOTION

Nos. 14994, 14995

SIR:

PLEASE TAKE NOTICE that upon all prior proceedings had herein, and the annexed affidavits of Daniel H. Greenberg, Esq., and Stephen Lillo, each sworn to the 28th day of January, 1965, the appellants will move this Court at a Term for Motions to be held before this Court at the United States Court House, Philadelphia, Pennsylvania, on the 8th day of February, 1965, at the opening of Court on that day, or as soon thereafter as counsel can be heard, for an order permitting appellants to file their brief out of time, but in no event later than February 12, 1965, to have this appeal heard upon the original typewritten record of the district court, to permit appellants to file a typewritten brief and to dispense with the printing and filing of an appendix herein, and granting unto appellants such other

and further relief as to the Court may seem just and proper.

Dated: New York, New York
January 28, 1965.

Yours, etc.,

DANIEL H. GREENBERG
Daniel H. Greenberg
Attorney for Appellants
Office and Post Office Address
110 East 42nd Street
New York 17, New York
OXFORD 7-3280

To: DAVID M. SATZ, JR., Esq.
United States Attorney
District of New Jersey
United States Court House
Newark 1, New Jersey

Received & Filed
Jan. 29, 1965
IDA O. CRESKOFF,
Clerk

Appendix A

UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

UNITED STATES OF AMERICA

vs.

PATERSON BLOOD BANK, INC., a corporation and STEPHEN LILLO,

Appellants.

AFFIDAVIT

Nos. 14994, 14995

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

DANIEL H. GREENBERG, being duly sworn, deposes and say:

1. I am the attorney for appellants in the above captioned appeal, and I respectfully submit this affidavit in support of their motion for leave to file their brief out of time and to dispense with the filing of an appendix, and to permit appellants to file a typewritten brief and to have this case heard upon the original typewritten record of the district court. I was trial counsel in this case, and I am fully familiar with all of the facts hereof. I wish to advise the Court that the undue delay in bringing this appeal on for hearing before this Court was caused solely by the inability of appellant Stephen Lillo, to raise the necessary funds to pay for the printing of the appendix and brief herein. I know Mr. Lillo has tried to raise funds and has not been successful in this matter.

2. I had intended to prepare a short printed appendix and to ask the Court to consider the transcript of the trial for the purpose of reviewing the evidence. The trial transcript herein consists of approximately 1200 pages of typewritten record and an additional 253 pages of a motion for suppression of evidence which was heard in advance of trial. The record cost Mr. Lillo approximately $1300.00 for the typewritten transcript of the trial. His affidavit, which is annexed hereto as part of these motion papers, discloses his present financial condition.

3. I have prepared a brief on behalf of the appellants herein, except that it has not been put in final form. This can be accomplished in the matter of a few days, and I expect that on or before February 5, 1965, this brief will be completed in final form. I believe there is much merit to appellants' appeal herein, especially in light of the inconsistent verdict which was rendered by the jury in the district court below.

4. The appellants are prepared to hand up to the court their copy of the transcript of the trial for the Court's use in consideration of this appeal. This transcript can be handed up either in advance of the argument of the appeal or on the date fixed for argument, as the Court may direct.

5. Under all of the circumstances, it is believed that in the interest of justice appellants' motion should be granted in all respects.

WHEREFORE, it is respectfully prayed that appellants' motion be granted in all respects.

DANIEL H. GREENBERG
Daniel H. Greenberg

Sworn to before me this
28th day of January, 1965.

FRANCINE BRECHER,
Notary Public, State of New York

Appendix A

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

UNITED STATES OF AMERICA

vs.

PATERSON BLOOD BANK, INC., a corporation and
STEPHEN LILLO,

Appellants.

Nos. 14994, 14995

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

STEPHEN LILLO, being duly sworn, deposes and says:

1. I am one of the appellants in the above captioned appeal, and I respectfully submit this affidavit in support of my motion for leave to file appellants' brief out of time and to dispense with the filing of an appendix, and to permit appellants to file a typewritten brief, and to have this case heard upon the original typewritten record of the district court. I wish to advise the Court that the reason for the delay in promptly prosecuting this appeal has been my inability to raise the necessary funds to pay for the printing costs which are usually associated with appeals . I have already paid approximately $1300.00 to obtain the typewritten transcript of the trial and in my present financial condition I have exhausted my available funds.

Appendix A

2. This case arose out of the operation of Paterson Blood Bank, Inc., a duly licensed blood bank operating under the authority and regulation of the National Institutes of Health of the Public Health Service, Department of Health, Education and Welfare. As the result of activities on the part of a local doctor in Paterson, New Jersey, we were put out of business, and I lost my complete investment therein. I tried to continue in business under the name of North Jersey Blood Service Inc., but I was compelled by reason of the circumstances of this case to sell out my interest in this business. During the pendency of this prosecution I had virtually no income and was compelled to rely upon the fact that my wife was employed by the Police Department of the City of Paterson, as a Clerk, in order to support ourselves. In addition, various members of my family helped us to make ends meet. Finally, in August, 1964, I started in a new venture, in the home furnishings business in an effort to earn a living. As with any new business I have not been able to earn a great deal of money out of this new venture.

3. During all of the intervening time I have not been able to obtain the necessary funds required for the prosecution of this appeal, and accordingly it has been delayed to the present time. I believe I have a good and meritorious appeal by virtue of the evidence introduced at the trial and the jury's verdict. There were three defendants on trial, Frank Rizzo, John Chiesa and myself, as well as the corporation, Paterson Blood Bank, Inc. Both Mr. Rizzo and Mr. Chiesa were licensed technicians authorized to operate blood banks under the National Institutes of Health of the Public Health Service, whereas I had no training in this field. I was the business manager of this venture. The indictment against us contained 36 counts,

and I was named in all 36 counts, whereas Mr. Rizzo was named in 18 counts and Mr. Chiesa was named in 18 counts different from those in which Mr. Rizzo was named. The jury returned a verdict acquitting Mr. Rizzo and Mr. Chiesa of all counts in which each was named, and I was acquitted of 25 counts and convicted on 11 counts. The verdict was wholly inconsistent and not based upon any rational analysis. Moreover, the entire prosecution case consisted of documents and records, most of which were seized by the Paterson Police Department, acting in conjunction with other state officials, during a raid in December 1962. There was no proof that I had knowledge of or personally did any of the acts alleged in the 11 counts in which I was convicted. I was sentenced to 9 months imprisonment on each count to run concurrently, notwithstanding the fact that all of the counts in this indictment consisted of misdemeanors only. I have continued on bail in the amount of $2500.00, the bail originally fixed at the time of my original arraignment.

4. For all of the foregoing reasons, it is respectfully prayed that this motion be granted and that my brief be permitted out of time and this case be heard upon the original typewritten record of the district court and upon typewritten briefs, and that I be granted such other and further relief as to the court may seem just and proper.

STEPHEN LILLO
Stephen Lillo

Sworn to before me this
28th day of January, 1965.

FRANCINE BRECHER
Notary Public, State of New York
Qualified in Bronx County
No. 03-0399060
Commission Expires March 30, 1965

Appendix A

UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

UNITED STATES OF AMERICA

vs.

PATERSON BLOOD BANK, INC., a corporation and STEPHEN LILLO,

Appellants.

NOTICE OF MOTION

Nos. 14994, 14995

SIR:

PLEASE TAKE NOTICE that upon all prior proceedings had herein, and the annexed affidavit of Daniel H. Greenberg, Esq. sworn to the 1st day of February, 1965, the appellants will move this Court at a Term for Motions to be held before this Court at the United States Court House, Philadelphia, Pennsylvania, on the 8th day of February, 1965, at the opening of Court on that day, or as soon thereafter as counsel can be heard, for an order permitting consolidation of the appeals of both appellants and the submission of one brief to cover both appeals, and granting unto ap-

pellants such other and further relief as to the Court may seem just and proper.

Dated: New York, New York
February 1, 1965.

Yous, etc.,

DANIEL H. GREENBERG
Daniel H. Greenberg
Attorney for Appellants
Office and Post Office Address
110 East 42nd Street
New York 17, New York
OXFORD 7-3280

To: DAVID M. SATZ, JR., Esq.
United States Attorney
District of New Jersey
United States Court House
Newark 1, New Jersey

Received and Filed: February 2, 1965.
IDA O. CRESKOFF, Clerk

Appendix A

UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

UNITED STATES OF AMERICA

vs.

PATERSON BLOOD BANK, INC., a corporation and STEPHEN LILLO,

Appellants.

AFFIDAVIT

Nos. 14994, 14995

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

DANIEL H. GREENBERG, being duly sworn, deposes and says:

1. I am the attorney for appellants herein, and I respectfully submit this affidavit in support of the motion for appellants for leave to consolidate the appeals herein and to permit appellants to file one brief in support of their appeal.

2. This case arises out of a single trial in which appellant Paterson Blood Bank, Inc. and appellant Stephen Lillo were two of four defendants named in a single criminal prosecution held in the District Court, District of New

Jersey. Both the corporate appellant and appellant Stephen Lillo were each named in 36 counts of the indictment in said proceeding. There was only one trial record and I acted as attorney for both appellants in said trial.

3. The points urged by the appellants on appeal are identical, with the exception of the fact that the corporate appellant has an argument addressed to those counts in which all of the individual defendants were acquitted but in which the corporate appellant alone was convicted. In other words, no person was shown to have committed any offense charged in the indictment wherein the corporate appellant alone was convicted. Since a corporation can only act through its officers, employees or agents, the failure of the jury to convict any live person or being having done the acts in said counts would be considered as a failure of proof as to the corporation. Except for this point the other points to be urged by the individual appellant Stephen Lillo will be urged on behalf of the corporation.

4. The Court should be advised that this corporation is now out of business, having become defunct during December, 1962, at the time of the seizure of all of its physical property by representatives of the Police Department of the City of Paterson, New Jersey and other state officials. Even though this corporation is wholly defunct and out of business the district judge imposed heavy fines against it on each count of which it was convicted and these fines totaled $10,000.00. Under the circumstances and in view of the possibility that there may be a new trial, it was deemed advisable by me that an appeal be taken on behalf of the corporation as well as the individual appellant Stephen Lillo who was sentenced to a nine month jail term.

Appendix A

5. Under all the circumstances of this case it is respectfully submitted that an order be made consolidating these appeals and permitting the same to be heard on one typewritten brief covering all the legal arguments urged by both appellants.

WHEREFORE, it is respectfully prayed that this motion be granted.

DANIEL H. GREENBERG
Daniel H. Greenberg

Sworn to before me this
1st day of February, 1965.

FRANCINE BRECHER
Notary Public, State of New York
Qualified in Bronx County
No. 03-0399060
Commission Expires March 30, 1965

Appendix A

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Nos. 14994, 14995

UNITED STATES OF AMERICA

vs.

PATERSON BLOOD BANK, INC., and
STEPHEN LILLO
PATERSON BLOOD BANK, INC.,
Appellant in No. 14994

STEPHEN LILLO,
Appellant in No. 14995

Present:

KALODNER, STALEY and GANEY, *Circuit Judges*

Upon consideration of the motions by appellants in the above entitled appeals,

It is ORDERED that leave be and it hereby is granted appellants to file consolidated typewritten briefs, out of time, on or before February 15, 1965; PROVIDED, however, that on or before February 26, 1965 the appellants file with the Clerk of this Court four (4) typed copies of a summary of the testimony, with page reference to the transcript of testimony, and serve one copy of this summary on the United States Attorney.

Dated: FEBRUARY 9, 1965

By the Court,

KALODNER
Circuit Judge

Received & Filed
Feb 9 1965
Ida O. Creskoff
Clerk

Appendix A

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Nos. 14994, 14995

UNITED STATES OF AMERICA

vs.

PATERSON BLOOD BANK, INC., and
STEPHEN LILLO
PATERSON BLOOD BANK, INC.,

Appellant in No. 14994

STEPHEN LILLO,

Appellant in No. 14995

Present:

KALODNER, STALEY and GANEY, *Circuit Judges*

Upon consideration of the motions by appellants in the above entitled appeals,

It is ORDERED that leave be and it hereby is granted appellants to file consolidated typewritten briefs, out of time, on or before February 15, 1965; PROVIDED, however, that on or before February 26, 1965 the appellants file with the Clerk of this Court four (4) typed copies of a summary of the testimony, with page references to the transcript of testimony, and serve one copy of this summary on the United States Attorney.

By the Court,
KALODNER
Circuit Judge

Dated: FEBRUARY 9, 1965

Appendix A

UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

UNITED STATES OF AMERICA

vs.

PATERSON BLOOD BANK, INC., a corporation and STEPHEN LILLO,

Appellants.

NOTICE OF MOTION

Nos. 14994, 14995

SIR:

PLEASE TAKE NOTICE that upon all prior proceedings had herein, the order of this Court dated February 9, 1965, and the annexed affidavit of Daniel H. Greenberg, sworn to the 25th day of February, 1965, the appellants will move this Court at the United States Court House, Philadelphia, Pennsylvania, by submission to the Court for an order modifying the order of this Court dated February 9, 1965, which provided that on or before February 26, 1965, the appellants file with the Clerk of this Court four typed copies of a summary of the testimony, with page reference to the transcript of testimony, and serve one copy of this summary on the United States Attorney, so as to provide that said summaries shall be served and filed on or before March 12, 1965; or in the alternative authorizing the appellants to serve said summaries out of time but in no event later

than March 12, 1965, and granting unto appellants such other and further relief as to the Court may seem just and proper.

Dated: New York, New York
February 25, 1965

Yours, etc.,

DANIEL H. GREENBERG
Attorney for Appellants
Office and Post Office Address
110 East 42nd Street
New York, N. Y. 10017
OXford 7-3280

To:

DAVID M. SATZ, JR., Esq.
United States Attorney
United States Court House
District of New Jersey
Newark 1, New Jersey

Received & Filed
Feb 26 1965
Ida O. Creskoff
Clerk

UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

UNITED STATES OF AMERICA

vs.

PATERSON BLOOD BANK, INC., a corporation and STEPHEN LILLO,

Appellants.

AFFIDAVIT

Nos. 14994, 14995

STATE OF NEW YORK, }
COUNTY OF NEW YORK, } ss.:

DANIEL H. GREENBERG, being duly sworn, deposes and says:

1. I am the attorney for appellants herein, and I respectfully submit this affidavit in support of appellants' motion for a modification of the order of this Court dated February 9, 1965, which requires that on or before February 26, 1965, appellants file four typed copies of a summary of the trial testimony in this case and serve one copy thereof upon the United States Attorney, so as to permit said summaries to be filed on or before March 12, 1965.

2. At the time that appellants prior motion was before the Court to consolidate these appeals and to permit appel-

lants to dispense with the filing of an appendix and to file a typewritten brief, I was not aware of the fact that the Court would require as a condition of granting their motion the filing of a typewritten summary of all the testimony in this case. At the time the order of this Court was granted in the prior motion, on February 9, 1965, I was then away from my office on active duty in the Office of the Judge Advocate General, United States Air Force, undertaking my annual two week tour of military service. I completed this tour of duty on February 19, 1965, and I went into my office on February 20, 1965, to go over my mail and other matters which had accumulated in my absence. It was then that I learned of the conditions of filing typewritten summaries of the trial testimony which was placed in the order of this Court granting the prior motion of appellants.

3. I immediately set about making the necessary summaries and at once realized that this was a tremendous undertaking, since the trial transcript of testimony alone exceeded 1100 typewritten pages. Accordingly, on February 23, 1965, the first office day following my military tour, I wrote to the Clerk of this Court advising her of the situation and requesting that the Court be asked if I could have additional time within which to prepare the said summaries and file them with the Court. In the meantime, I continued to work on the summaries. I have found that it would be impossible to complete this task within the time limits fixed by the Court's order. Accordingly, I request that I be granted to and including March 12, 1965 for filing said summaries. This additional time will enable me to complete the job and to do it properly. No prejudice can result to the Government from the granting of this application since I believe they have the full trial transcript and the attor-

ney representing the Government on this appeal is the attorney who tried the case.

WHEREFORE, it is respectfully prayed that this motion be granted.

DANIEL H. GREENBERG

Sworn to before me this
25th day of February, 1965.

FRANCINE BRECHER
Notary Public, State of New York
Qualified in Bronx County
No. 03-0399060
Commission Expires March 30, 1965

Appendix A

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Nos. 14994, 14995

UNITED STATES OF AMERICA

vs.

PATERSON BLOOD BANK, INC., and
STEPHEN LILLO

Appellant in No. 14994

STEPHEN LILLO,

Appellant in No. 14995

Present:

KALODNER, STALEY and GANEY, *Circuit Judges*

Upon consideration of the motion by appellants in the above entitled cases,

It is ORDERED that the time for filing and serving the summary of testimony be and it hereby is extended to March 12, 1965.

By the Court,

KALODNER
Circuit Judge

Dated: March 9, 1965

Received & Filed
Mar 9 1965
Ida O. Creskoff
Clerk

Appendix A

UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

UNITED STATES OF AMERICA

vs.

PATERSON BLOOD BANK, INC., a corporation and STEPHEN LILLO,

Appellants.

NOTICE OF MOTION

Nos. 14994, 14995

SIR:

PLEASE TAKE NOTICE that upon all prior proceedings had herein, and the annexed affidavit of Daniel H. Greenberg, Esq., sworn to the 16th day of July, 1965, the appellants will move this Court at a Term for Motions to be held before this Court at the United States Court House, Philadelphia, Pennsylvania, on the 19th day of July, 1965, at the opening of Court on that day, or as soon thereafter as counsel can be heard, for an order permitting appellants to file the typewritten summaries of testimony out of time, but in no event later than July 31, 1965, and granting unto appel-

lants such other and further relief as to the Court may seem just and proper.

Dated: New York, New York
July 16, 1965.

Yours, etc.,

DANIEL H. GREENBERG
Attorney for Appellants
Office and Post Office Address
110 East 42nd Street
New York, New York 10017
OXford 7-3280

To:

DAVID M. SATZ, JR., Esq.
United States Attorney
District of New Jersey
United States Court House
Newark 1, New Jersey

Received & Filed
Jul 19 1965
Ida O. Creskoff
Clerk

Appendix A

UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

UNITED STATES OF AMERICA

vs.

PATERSON BLOOD BANK, INC., a corporation and STEPHEN LILLO,

Appellants.

AFFIDAVIT

Nos. 14994, 14995

STATE OF NEW YORK,
COUNTY OF NEW YORK, } ss.:

DANIEL H. GREENBERG, being duly sworn, deposes and says:

1. I am the attorney for appellants in the above captioned appeal, and I respectfully submit this affidavit in support of appellants' motion for leave to file the typewritten summaries of the testimony out of time, but in no event later than July 31, 1965. Heretofore under date of March 9, 1965, the Court granted an extension of time to file these summaries until March 12, 1965. The summaries were originally ordered to be prepared in the order of this Court dated February 9, 1965.

2. As counsel for appellants it is my personal responsibility to see to it that these summaries were prepared and filed. In this regard, appellants themselves are not a fault, and I accept full personal responsibility for my failure to complete this task, and to have the summaries filed within the time limits heretofore fixed by the Court. If the Court wishes to impose sanctions herein for this failure they should be directed against me personally and not against appellants.

3. The fact of the matter is I have had no assistance from anyone in the handling of this case, from its very inception through the filing of the appeal. The task of preparing summaries of testimony prove to be most difficult and time consuming, and during the intervening time since these summaries were due, I have been engaged in a great many different matters. For example, on May 10, 1965, I was assigned as appellate counsel for an indigent defendant in an appeal from a judgment of conviction in a complicated case following a six week trial, following my assignment by Honorable Dudley B. Bonsal, United States Judge. This appellant, Joseph Pagano, was only one of a number of appellants in said proceeding. The appeal as to the other defendants had been set for argument on June 11, 1965, and two weeks before that date, Honorable Irving R. Kaufman, Circuit Judge sent for me and asked me to prepare a brief for appellant Pagano in time for the argument of the appeal. As a consequence, I was required to drop all my other work to complete this assigned task. I recite the foregoing simply to indicate to the Court that for an individual practitioner in criminal cases it is sometimes difficult to complete all one's tasks within strict time limits. However, I do not submit this as an excuse for my failure to file the summaries herein.

4. The summaries are now well on their way to completion. Following my receipt of a letter from the Clerk of this Court, dated June 7, 1965, reminding me that the summaries had not been filed, I again turned to them and have managed to complete a large part of them. If granted two additional weeks the summaries will be filed as required, and the case can then be listed for argument at the opening of the Court's Term in October, 1965. The appellee has not as yet served and filed its brief, since it is not required to do so until these summaries are filed.

WHEREFORE, it is respectfully prayed that this application be granted in all respects.

DANIEL H. GREENBERG

Sworn to before me this
16th day of July, 1965.

/s/ FRANCINE ROSEN
Francine Rosen
Notary Public, State of New York
No. 03-3347130
Qualified in Bronx County
Commission Expires March 30, 1967

Appendix A

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Nos. 14994, 14995

UNITED STATES OF AMERICA

vs.

PATERSON BLOOD BANK, INC., and
STEPHEN LILLO

PATERSON BLOOD BANK, INC.,

Appellant in No. 14994

STEPHEN LILLO,

Appellant in No. 14995

Present:

BIGGS, *Chief Judge,* and KALODNER and FREEDMAN,
Circuit Judges.

It appearing that the appeals in the above-entitled cases were docketed and the record filed July 24, 1964, that the brief and appendix were due thirty days thereafter, that after successive extensions the appellants filed their consolidated brief on February 10, 1965, that by order of February 9, 1965 this Court granted appellants leave to dispense with appendices provided, however, that they file a summary of testimony by February 26, 1965, that the time for filing the summary of testimony was extended to

Appendix A

March 12, 1965, that although the appellants were advised by the clerk of this Court of their failure to comply with the Court's order they made no response to the several letters, that on July 19, 1965, when the case was called for dismissal for want of timely prosecution the appellants filed a motion for leave to file the summary of testimony out of time on July 31, 1965, that counsel for appellants did not appear in person on July 19, 1965 to show cause why the appeals should not be dismissed,

It is ORDERED that the motion to file the summary of testimony out of time be and it hereby is denied;

It is further ORDERED that the appeals in the above-entitled cases be and they hereby are dismissed for want of timely prosecution.

By the Court,

BIGGS,
Chief Judge

July 21, 1965.

Received and filed: July 21, 1965
IDA O. CRESKOFF, Clerk

Appendix A

UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

UNITED STATES OF AMERICA

vs.

PATERSON BLOOD BANK, INC., a corporation and STEPHEN LILLO,

Appellants.

AFFIDAVIT

Nos. 14994, 14995

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

DANIEL H. GREENBERG, being duly sworn, deposes and says:

1. I am an attorney at law duly admitted to practice in this Court. I am a member of the Bar of the State of New York and of the District of Columbia, and of various federal district courts. I maintain my offices at 110 East 42nd Street, New York City, and I practice law together with Marvin Margolis, Esq. under the firm name of Greenberg & Margolis.

2. I am the attorney for the appellants in the above captioned appeal and I am fully familiar with all of the facts

in this case. Heretofore under date of July 16, 1965, I moved before this Court for an order permitting appellants to file typewritten summaries of testimony out of time, but in no event later than July 30, 1965. This motion was denied by this Court, and in turn the Court dismissed the appeals herein for want of timely prosecution. In view of the fact that this appeal cannot be heard before the October 1965 Term of this Court, I believe that the order dismissing these appeals was inappropriate. In my affidavit in support of the aforesaid motion for leave to file the typewritten summaries of testimony out of time, I accepted full personal responsibility for my failure to see to it that the summaries were prepared and filed. I also stated that the appellants themselves were not at fault.

3. However, I believe that I must submit this affidavit to the Court in order to prevent a wrong impression being created with respect to my responsibility herein, and also to give the true facts relating to the costs of the appeal allegedly being borne by the appellant, Stephen Lillo.

4. I wish the Court to know that at all times I kept the appellant Stephen Lillo fully advised of the steps being taken to prosecute his appeal. In order to save Mr. Lillo several thousand dollars of printing costs, I applied to this Court for leave to have the appeal heard upon the original typewritten record of the District Court in typewritten briefs. This motion was granted during January, 1965, with the imposition of the condition that typewritten summaries of the complete trial transcript be filed. This latter task was most onerous and was the one which I was unable to complete before the appeal was ordered dismissed.

5. Mr. Lillo's statements in his affidavti of August 6, 1965, submitted to this Court, respecting the costs of the appeal, paid by him are in error. As to the cost of the trial transcript, I believe that the transcript was considerably less than the $1,300.00 Mr. Lillo states he paid. As a matter of fact, at my direction, he personally handled the matter of paying for the trial transcript directly with the District Court Reporters for the District of New Jersey. In other words, none of the funds for paying for the trial transcript were delivered to me or to my firm for transmittal to the court reporters; rather, Mr. Lillo personally handled that matter directly with the court reporters, and I have no responsibility with regard to it.

6. As to the fee paid to me for representing Mr. Lillo on this appeal the facts are as follows: My firm, Greenberg & Margolis, received the following amounts of money from Mr. Lillo, and all these amounts were paid by check which were deposited into the firm account of Greenberg & Margolis on the dates set forth next to the amounts:

July 24, 1964	$ 50.00	Docket Fees
August 18, 1964	$500.00	Fee
October 6, 1964	$500.00	Fee
January 28, 1965	$300.00	Fee
February 11, 1965	$200.00	Fee
February 26, 1965	$ 35.00	Mimeograph Service

As to the docket fees, Mr. Lillo's check was deposited in our firm account, and we in turn drew our check payable to the order of the Clerk of this Court. As to the $35.00,

for mimeograph services for reproducing appellants' brief, this check was returned by Mr. Lillo's bank marked "Insufficient Funds", and upon his instruction was redeposited and subsequently paid.

7. As can be seen from the foregoing, my firm received the total fee of $1,500.00. The agreed fee for representing appellants on this appeal was $2,000.00, for which the remaining $500.00 has not been paid.

8. If the Court grants appellants' motion to reinstate this appeal, I can have the summaries filed within five (5) days from the date I am advised of the entry of an order to that effect.

9. I wish the Court to know that I received a copy of Mr. Lillo's affidavit from the office of the United States Attorney for the District of New Jersey, and am responding to said affidavit in order to set the record straight. Under the circumstances, I recognize the extent to which I have been responsible for the dismissal of this appeal. Had I not sought to save Mr. Lillo the cost of printing I would not have been put in the position of having to summarize the entire trial transcript, which in this case was an almost impossible task since I did not have any of the several hundred exhibits available while said summaries were being prepared. My only other dereliction apparently was in failing to respond to the letter sent to me by the Clerk of this Court early in June, 1965. At that time, however, I was under severe pressure as assigned counsel, acting without fee in a case for the United States Court of Appeals for the Second Circuit, to which I referred in my affidavit of July 16, 1965.

10. I believe that in the interests of justice, and although I am apparently discharged as appellants' attorney herein, that this appeal should be reinstated and set for argument during the Fall Term of this Court.

DANIEL H. GREENBERG

Sworn to before me this
13th day of August, 1965.

FRANCINE ROSEN
Notary Public, State of New York
No. 03-3347180
Qualified in Bronx County
Commission Expires March 30, 1967

Received & Filed
Aug 16 1965
Ida O. Creskoff
Clerk

Appendix A

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

UNITED STATES OF AMERICA

vs.

PATERSON BLOOD BANK, INC., and
STEPHEN LILLO,

Appellants.

Nos. 14,994 AND 14,995

MOTION

To: *The Honorable Judges of the United States Court of Appeals for the Third Circuit*

SIRS:

The Appellants, Stephen Lillo and the Paterson Blood Bank, Inc., respectfully move the Court that the appeal of the Appellants, which was dismissed by Order of this Court dated July 21, 1965, be reinstated and that the cases be restored to the list of pending appeals on the ground that the appeals were dismissed because of delay on the part of counsel and without the knowledge of the Appellants.

The Appellants rely upon the Affidavit attached hereto and made a part of this Motion.

VAN RIPER & BELMONT
By FREDERIC C. RITGER, JR.
Attorneys for Appellants

Dated: August 5, 1965.

Received & Filed
Aug 7 1965
Ida O. Creskoff
Clerk

Appendix A

UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

UNITED STATES OF AMERICA

vs.

PATERSON BLOOD BANK, INC., and
STEPHEN LILLO,

Appellants.

Nos. 14,994 AND 14,995

AFFIDAVIT

STATE OF NEW JERSEY,
COUNTY OF ESSEX, } ss.:

STEPHEN LILLO, of full age, being duly sworn upon his oath according to law, deposes and says:

1. I am the Appellant in the above entitled criminal case, having been tried before the Honorable Thomas F. Meaney and a jury in the Spring of 1964.

2. I was found guilty by the jury on 11 counts set forth in a 36 count indictment. I was found not guilty on the remaining counts.

3. In June, 1964, Judge Meaney imposed a sentence of nine months imprisonment on each count, to run concur-

rently, and fixed bail which I posted pending my appeal. Subsequent to my sentence, I retained Daniel H. Greenberg, Esq., an attorney with offices at 110 East 42nd Street, New York, New York, to represent me and the Paterson Blood Bank, Inc., a co-defendant on appeal.

4. Mr. Greenberg had represented me, the corporation and one other defendant on the trial of the case.

5. As a retainer and in payment of services to be performed in the prosecution of my appeal, I paid Mr. Greenberg the sum of $2,500.00. In addition, I purchased a stenographic transcript of the trial proceedings, for which I paid $1,300.00. To the best of my knowledge, Mr. Greenberg proceeded to comply with the rules of Court and proceeded to represent my interests. From time to time, Mr. Greenberg advised me that he was seeking postponements or extensions of time for the reason that he was extremely busy on other matters, and I took it for granted that he was successful in his applications since he never advised me that he was having any difficulty in complying with the Court's orders.

6. On July 30, 1965, I received a letter from Mr. Greenberg in which he enclosed a copy of an Order of the United States Court of Appeals for the Third Circuit dated July 21, 1965, which Order, among other things, dismissed the appeals in my cases "for want of timely prosecution". I immediately attempted to see Mr. Greenberg and did visit his office on Monday, August 2, 1965. As soon as I had left his office, I called the office of Van Riper & Belmont, Newark, New Jersey, in an effort to retain that firm to represent me.

Appendix A

7. On Tuesday, August 3, 1965, I visited the office of Van Riper & Belmont and retained the firm for the purpose of filing a motion with the United States Court of Appeals, requesting a reconsideration and reinstatement of my cases.

8. I wish to state that at no time did I know that the case was in danger of dismissal for want of timely prosecution, and at all times my attorney led me to believe that the matter would be decided on its merits in due course.

9. I was notified by the office of the United States Attorney that I was to surrender to the Marshall to commence the service of my sentence on August 6, 1965.

10. My attorneys, Van Riper & Belmont, have petitioned to the District Court for the District of New Jersey, and the execution of the sentence imposed upon me has been stayed pending a hearing on an Order to Show Cause returnable August 13, 1965. I am presently at liberty on bail.

11. I make this Affidavit for the purpose of bringing to this Court the facts pertaining to the delay in the prosecution of my appeal and to demonstrate to the Court that the "want of timely prosecution" was through no fault of my own.

STEPHEN LILLO (L.S.)
Stephen Lillo

Sworn and subscribed to before me
this 6th day of August, 1965.

ARLENE M. DEVLIN
Notary Public of New Jersey
My Commission Expires May 15, 1966

Appendix A

IN THE

UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

Nos. 14994, 14995

UNITED STATES OF AMERICA

vs.

PATERSON BLOOD BANK, INC., and
STEPHEN LILLO
PATERSON BLOOD BANK, INC.,
Appellant in No. 14994

STEPHEN LILLO,
Appellant in No. 14995

Present:

BIGGS, *Chief Judge,* and KALODNER and FREEDMAN, *Circuit Judges*

Upon consideration of the motion by appellants that the above entitled cases be reinstated and restored to the list of pending appeals, and of the affidavit attached to the motion, and of the affidavit filed by Daniel H. Greenberg, Esquire, counsel for appellants prior to the dismissal of the appeals,

It is ORDERED that the motion be and it hereby is denied.

By the Court,

BIGGS
Chief Judge

Dated: September 13, 1965

Received & Filed
Sep 13 1965
Ida O. Creskoff
Clerk